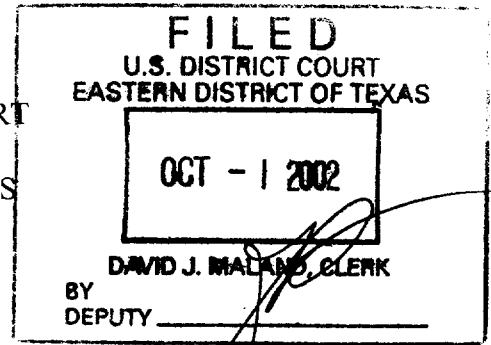


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10/01/02

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION



JACKIE LEE MILLER

§

v.

§

CIVIL ACTION NO. 9:02cv210

DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, INSTITUTIONAL
DIVISION

§

§

REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE

The above-entitled and numbered habeas corpus action was heretofore referred to United States Magistrate Judge Judith K. Guthrie. On August 22, 2002, the undersigned ordered the Petitioner to submit the \$5 filing fee or a certified data sheet for his inmate trust account within 30 days. No response to the Order has been received from the Petitioner. The Court received an acknowledgment card revealing that Petitioner received the Order on August 23, 2002. The undersigned concludes that Petitioner has failed to prosecute his case by failing to comply with an order of the Court. Accordingly, this case should be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

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Recommendation

In light of the foregoing, it is recommended that this case be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within ten days after service shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Assn.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 30th day of September, 2002.


JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE